IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8669 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VYANKTESH @ VERA KAND SWAMI SHETHIYAR , VANIYA (MADRASI)

Versus

POLICE COMMISSIONER

Appearance:

MR GA PATHAN for Petitioner

MR UDAY BHATT, Ld. APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 07/09/2000

ORAL JUDGEMENT

1. The petitioner has filed this writ petition under Article 226 of the Constitution of India, challenging the legality of order of detention dated 03.01.2000 passed by respondent no.1.

2. As per papers of grounds of detention, Respondent No.1 passed an order of detention on the ground that the petitioner is a dangerous person within the meaning of section 2(c) of the Gujarat Prevention of Anti-social Activities Act, 1985, (In short `the Act') and further that activities of the petitioner are prejudicial to the maintenance of the public order.

3. As per case of the detaining authority two criminal cases lodged against him have been taken into consideration for he having a subjective satisfaction, before passing order of detention. The detaining authority has also placed reliance on statements of two witnesses whose identity has not been disclosed by claiming a privilege under sec.9(2) of the Act.

4. Mr.G.A.Pathan, learned advocate for the petitioner has argued that statement of first witness was recorded on 29.12.99 and statement of another witness was recorded on 31.12.99. From papers it also appears that the detaining authority had verified two statements on 3.1.2000 and on that very day i.e. on 3.1.2000 the detaining authority had passed the order of detention which is challenged in this present writ petition.

4.1 Learned advocate for the petitioner has argued that privilege claimed by detaining authority is illegal because he had no time to apply his mind for having his subjective satisfaction before passing order of detention. He has placed reliance in the case of Kalidas Chandubhai Kahar Vs. State of Gujarat and ORs. reported in 1993 (2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under Sec. 9(2) of the Act and while doing this exercise he is required to verify whether persons whose statements are relied on are in fact genuine or fictitious persons. He is also required to make exercise that whether statements are bogus statements or not. Looking to these requirements exercise is to be made by the detaining authority. In this case it can safely be said that the detaining authority had no time to do such exercise which is expected to be done by him and, therefore, order of detention based on such statements prima facie is bad in law and therefore this writ petition deserves to be allowed.

5. Here in this case, none of the respondents has filed any written-reply-in-affidavit. This Court has deprecated the method of not filing the written reply in the case of Special Civil Application No.6322 of 1999

decided on 11th February, 2000.

6. In view of discussion made hereinabove, the order of detention which is challenged in this Special Civil Application is bad in law and same is required to be quashed and set aside. Accordingly, the detention order dated 3.1.2000 passed by respondent No.1 in respect of detenu is hereby quashed and set aside. The detenu is ordered to be released, forthwith, if he is not required to be detained for any other criminal case or proceeding. Rule is made absolute. Direct service is permitted.

(H.H. Mehta, J.)

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